

INTERLOCAL AGREEMENT

THIS AGREEMENT is made and entered into by and between Southeast Community College, hereinafter "College," and the City of Lincoln, Nebraska, a municipal corporation, on behalf of its Fire and Rescue Department, hereinafter "City."

WHEREAS, the Interlocal Cooperation Act, NEB.REV.STAT. §§ 13-801 through 13-827, provides that two or more public entities may enter into an agreement for joint or cooperative action, and this Agreement is made and entered into pursuant to the provisions of the Act; and

WHEREAS, College and City have previously acted jointly to create the structure known as "The Fire Training Tower," hereinafter "Tower" located at on the campus of College at 8800 O St., Lincoln, Nebraska; and

WHEREAS, College and City desire to jointly renovate the Tower by way of adding protective burn panels to the portion of the Tower used for live burns; and

WHEREAS, the purpose of this joint action is to provide physical facilities and to permit maximum use thereof so that both College and City may fulfill their responsibilities for fire technology training at a lesser cost than if each acted independently.

NOW THEREFORE, in consideration of the mutual covenants contained herein, it is agreed by the parties hereto as follows:

1. The Tower is owned by College, and is a structure created and designed for the purpose of conducting burning such that City fire suppression personnel and trainees and the College's students may practice controlling and otherwise studying the fires. In order that the Tower may continue to be used in this fashion, it is prudent to renovate it by equipping it with protective burn panels that will better protect the structure during burn activities. For purposes of

this Agreement, any reference to “renovate” or “renovation” shall mean the installation of the protective burn panels as lining in portion of the Tower in which live burns are conducted.

2. College has or will let bids for the installation of the protective burn panels in accordance with applicable laws. The College shall have the responsibility of awarding a bid and overseeing to renovation project.

3. City agrees to pay the sum of \$15,000.00 for its share of the costs associated with the plan and specification preparation as well as construction costs associated with the renovation of the Tower. These funds will be payable upon execution of this Agreement, but shall be refunded by College on or before December 31, 2004 if the renovation has not been completed by said date. The balance of the costs associated with the renovation of The Tower will be borne by College.

4. Upon completion of the renovation, College and City shall, subject to the other terms and conditions of this agreement, have joint access to the Tower at all times. In this regard, College grants to City a license to use the facility upon reasonable notice according to the terms and conditions contained herein at no cost or expense to City. It is understood and agreed by City that the rights granted by College to City herein will not be exercised in such a way to interfere with or adversely affect (1) the use, operations, maintenance, or development of the Tower or any other property of the College or (2) the operation and control of any of the programs of the College. College may allow other parties not subject to this Agreement to use the Tower for fire training, including live burning, provided such using party returns the Tower to the same or similar condition in which it was prior to their use, and, further provided, such

using party indemnifies and holds harmless the City of Lincoln, its officers and agents, for any claim associated with the using party's use of the Tower.

5. College shall have general administration of the Tower and its duties and responsibilities shall include the following:

A. The College shall adopt a budget of the cost of maintenance, repairs, insurance, if any, equipment, services other than staff, utilities, and all other costs of operations of the Tower;

B. The College shall be responsible for any costs as enumerated in Paragraph A, above, except, however, City shall pay to College the annual sum of \$2000.00 excluding the first contract year, to be used to offset any repairs, maintenance, or replacement costs associated with the burn protection panels. The first such payment shall be made on or before July 1, 2005 and subsequent payments shall be made on or before July 1 of each succeeding year so long as this agreement is in effect. If in any given contract year the City is denied access to the Tower for purposes of training or conducting live burns, and such denial constitutes a breach of this agreement, the City shall not be required to pay that year's payment of \$2000.00.

C. If deemed desirable, College may establish a regular schedule for the reciprocal use by each party of the Tower, provided, however, that City shall, upon giving thirty days notice prior to each use, be permitted no fewer than forty days access per contract year for purposes of conducting training or live burns;

D. In the event the parties hereto disagree regarding any of the terms or conditions contained herein and are unable to resolve such disagreements between themselves,

the disagreement shall be arbitrated by a competent and qualified person selected by the City Attorney and legal counsel of the College.

6. This Agreement shall remain in full force and effect until September 1, 2035, unless sooner terminated or modified by mutual agreement of the parties. The term of the Agreement may be extended for any further term or terms as the parties may from time to time mutually agree.

7. Right of Termination:

A. After January 1, 2006, the College shall have the right to terminate this agreement at any time upon giving six months' written advance notice of its intention to terminate the agreement to the City. If the College exercises its right to terminate the agreement under the terms of this paragraph, then the College shall pay the City compensation which shall be computed according to the following formula:

$$\frac{\$15,000 - \$15,000 \times \text{number of days elapsed since contract execution}}{11,315 \text{ days}}$$

B. After January 1, 2006, the City shall have the right to terminate this agreement at any time upon giving six months written advance notice of its intention to terminate the agreement to the College. In such case, the City shall not be entitled to a refund of any portion of the initial \$15,0000 payment, but shall be relieved of the obligation to make annual payments of \$2,000.00 and all other contractual obligations.

8. The parties agree that the City will have sole responsibility for designing and supervising any training exercises which are engaged in by City firefighters at the Tower. The City agrees that, prior to engaging in any such exercise, the City will inspect the Tower to ensure

that it is in good repair and in a suitable condition for use in connection with the training exercise.

9. The parties mutually agree to indemnify and hold harmless the other party on any claims for property damage, personal or bodily injury, or any claims of any other nature whatsoever which may arise as a result of the other party's activities in the use of the Tower. This indemnification shall not require either party to indemnify and hold harmless the other party for any claims resulting from the sole negligence of the other party

10. Any amendments to this Agreement shall be valid upon the mutual agreement of College and City and when reduced to writing. Subject to the appropriations power of the City Council, the Mayor may, by executive order, agree to amendments hereto.

Dated this _____ day of June, 2004.

SOUTHEAST COMMUNITY COLLEGE

By: _____
Dr. Jack Huck, President

CITY OF LINCOLN, NEBRASKA

By: _____
Mayor Colleen Seng

Approved as to Form & Legality:

Assistant City Attorney